

REMARKS

I. Status of the claims

Upon entry of this Amendment, claims 1-3 are pending. Claims 4-8 are cancelled herein.

All amendments herein are made without prejudice or disclaimer as to all deleted subject matter. Applicants specifically reserve the right to pursue all deleted subject matter in one or more divisional and/or continuation application.

II. Status of the specification

The specification has been amended at pp. 7 and 8 to correct typographical errors. More specifically, four European patent applications were incorrectly cited at paragraphs on those pages corresponding to ¶¶ [0012], [0013], [0017], and [0018] of the instant application as published (US 20060194872), referring to EU 345593, EU 483772, EU 324377, and EU 458037, respectively, rather than their correct designations, i.e., EP 345593, EP 483772, EP 324377, and EP 458037. As these errors are typographical in nature, no new matter is added by these amendments.

III. Examiner's Interview dated June 1, 2009

The Applicant wished to thank the Examiner for the interview conducted with the undersigned Applicant's representative, Andrew K. Holmes, Ph.D., concerning (i) the current rejection of claims 1-3 under 35 U.S.C. § 103 for obviousness over the Ohkawa reference in view of the Aono reference (see below), (ii) Applicant's arguments and Declaration under 37 C.F.R. § 1.132 submitted September 2, 2008 in response to the above-referenced obviousness rejection, and (iii) rejoinder and 35 U.S.C. § 112 issues regarding claims 4-8 (see below). A Summary of this Examiner's Interview was entered into the prosecution record for the instant application on June 2, 2009.

During the June 1, 2009 Examiner's Interview, the Examiner indicated that claims 1-3 are allowable in light of Applicant's arguments and Declaration under 37 C.F.R. § 1.132 submitted

September 2, 2008 (in response to a June 2, 2008 rejection for obviousness over the Ohkawa reference in view of the Aono reference). However, the Examiner did not indicate that these claims were allowed in the current Office Action (dated March 30, 2009), because claims 4-8 were withdrawn by the Examiner in the current Office Action as being drawn to non-elected subject matter – accordingly, the Examiner decided to defer consideration of Applicant's arguments and Declaration under 37 C.F.R. § 1.132 submitted September 2, 2008, so that the Applicant had the opportunity to put claims 4-8 in condition for allowance by overcoming certain 35 U.S.C. § 112 concerns (see below), so that the Examiner could thereby consider rejoinder of those claims.

Applicant notes that in the June 2, 2009 Summary of the June 1 Examiner's Interview, the Examiner indicated that he would expedite allowance of claims 1-3 if Applicant chose to cancel claims 4-8 (with the option of pursuing patent protection for these claim in a Division/Continuation application. Applicant thanks the Examiner for his suggestion, and notes that this is indeed the strategy being pursued, as set forth below.

IV. Rejection of Claims 1-8 under 35 U.S.C. § 103(a)

Claims 1-8 are rejected under 35 U.S.C. § 103(a) as unpatentable over a journal article authored by Ohkawa et al.¹ ("Ohkawa") in view of European Patent Application Publication No. 0 483 772 A1 by Aono et al. ("Aono"). The Examiner contends that Ohkawa in combination with Aono renders the claims obvious.

As a first matter, in response, claims 4-8 have been cancelled herein without prejudice and disclaimer.

Regarding claims 1-3, as per the Examiner's request made during the June 1, 2009 Examiner's Interview, Applicant hereby incorporates in their entirety the arguments and Declaration under 37 C.F.R. § 1.132 submitted September 2, 2008 in support of Applicant's contention that claims 1-3 are nonobvious over Ohkawa in view of Aono. The Examiner has already indicated that

¹ S. Ohkawa et al., "5-Aminocoumarans: Dual Inhibitors of Lipid Peroxidation and Dopamine Release with Protective Effects against Central Nervous System Trauma and Ischemia", *Journal of Med. Chem.*, **40**, 559-573 (1997).

claims 1-3 are nonobvious over Ohkawa in view of Aono, and thus allowable. Accordingly, the Applicant respectfully requests withdrawal of this rejection, and immediate allowance of claims 1-3.

V. 35 U.S.C. § 112 issue regarding claims 4-8

During the June 1, 2009 Examiner's Interview with Applicant's representative, the Examiner indicated that before he can consider rejoinder of non-elected claims 4-8, the Applicant must demonstrate that these claims satisfy the enablement requirement set forth in 35 U.S.C. § 112, first paragraph.

In response, without conceding the validity of Examiner's concerns regarding enablement, the Applicant has cancelled claims 4-8 **without prejudice or disclaimer as to the cancelled subject matter**.

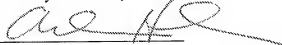
Accordingly, Applicant submits that cancellation of claims 4-8 renders the Examiner's concerns moot. In addition, Applicants specifically reserve the right to pursue claims 4-8 in one or more divisional and/or continuation application(s).

CONCLUSION

This application is believed to be in condition for allowance, which is earnestly solicited. If the Examiner believes there are further issues that could be advance by an interview or entry of an Examiner's Amendment, the Examiner is invited to contact the undersigned attorney.

Dated: June 25, 2009

Respectfully submitted,

By 

Andrew K. Holmes

Registration No.: 51,813
DARBY & DARBY P.C.
P.O. Box 770
Church Street Station
New York, New York 10008-0770
(212) 527-7700
(212) 527-7701 (Fax)
Attorneys/Agents For Applicant